

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARK SUMNER,

Plaintiff,

-vs-

Case No. 6:18-cv-40-Orl-28GJK

JONATHAN D. GARNER and PALM BAY AIR
& HEAT, INC.,

Defendants,

and

PNC BANK, N.A.,

Garnishee.

REPORT AND RECOMMENDATION

This case is before the Court on Plaintiff's Motion for Final Judgment of Garnishment (Doc. 69). On November 7, 2019, the Clerk entered judgment for Plaintiff and against Defendants, jointly and severally, for \$16,525 (Doc. 63). At Plaintiff's request, the Clerk issued a Writ of Garnishment directed to PNC Bank, N.A. (Doc. 66). On December 23, 2019, PNC Bank answered, stating that Defendant Palm Bay Air & Heat Inc. has an open account equal to the amount on the face of the Writ (Doc. 67 at 1). PNC Bank claims the \$100 statutory attorney fee. *Id.* See Fla. Stat. § 77.28 (2019) (requiring party applying for writ to pay \$100 statutory fee to garnishee on demand).¹

Plaintiff, pursuant to Florida Statute section 77.055 served the Writ of

¹ I assume Plaintiff has remitted the statutory fee to PNC Bank.

Garnishment on Palm Bay which has not responded (Doc. 68 at 2). Today, Plaintiff filed the pending motion asking the Court to enter final judgment of garnishment in his favor in the amount of \$16,525 (Doc. 69 at 3).

Under 28 U.S.C. § 636(c)(1), a United States Magistrate Judge may only enter judgment in a civil matter upon the express written consent of the parties and the special designation from the district court. *Id.* Otherwise, with respect to dispositive motions, such as motions seeking entry of judgment, a United States Magistrate Judge may, upon referral, issue report and recommendations to the district court. 28 U.S.C. § 636(b)(1)(B). Pursuant to Local Rule 6.01(c)(19), a United States Magistrate Judge is authorized to “[c]onduct all proceedings in civil suits, before or after judgment, *incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Rule 69, Fed.R.Civ.P.*” (emphasis added). In the motion, Sumner requests judgment against PNC Bank (Doc. 66). While Local Rule 6.01(c)(19) gives a United States Magistrate Judge the authority to conduct all proceedings “incident to the issuance” of writs of garnishment, the process of proceeding to judgment is distinct from proceedings incident to issuing a writ of garnishment. Thus, pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (c)(1), I may not enter judgment, but may issue a report and recommendation regarding the same to the district court.

Section 77.083, Florida Statutes, provides that a judgment may be entered against a garnishee based upon its answer or, if a reply is filed, after a trial on the reply. Any judgment must not exceed the amount unpaid on the final judgment against a

defendant or the amount of the garnishee's liability to a defendant. *Id.*

PNC Bank's answer states that it is in possession of \$16,525, which is owed to Palm Bay Air & Heat, Inc. (Doc. 67). Plaintiff served the Writ of Garnishment on Palm Bay Heat & Air and it has not made any response (Doc. 68 at 2). Accordingly, Plaintiff has satisfied the statutory requirements for a judgment on the Writ of Garnishment and therefore, it is recommended that the motion be granted.

Based on the forgoing, it is **RECOMMENDED** that the motion (Doc. 69) be **GRANTED**, and that judgment be entered in favor of Plaintiff and against PNC Bank in the amount of \$16,525 pursuant to Section 77.083, Florida Statutes.

Notice to Parties

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

RECOMMENDED in Orlando, Florida, on January 13, 2020.


THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Party